



Federal Communications Commission
Washington, D.C. 20554

December 19, 2018

VIA ELECTRONIC MAIL

Jimmy Tobias
MuckRock News
411A Highland Ave
DEPT MR 59552
Somerville, MA 02144
59552-24153199@requests.muckrock.com

Re: Freedom of Information Act Request Control No. FCC-2018-000840

Dear Mr. Tobias:

This responds to your Freedom of Information Act (FOIA) request, which the Federal Communications Commission's (Commission or FCC) FOIA Office received on August 17, 2018.¹ The FCC's FOIA Office assigned Control No. FCC-2018-000840 to your request and referred it to the Wireline Competition Bureau for processing. In your FOIA request, you indicate the following:

I hereby request the following records: Any and all written or electronic communications, including attachments, sent or received by members of the Broadband Deployment Advisory Committee's Streamlining Federal Siting Working Group that contain one or more of the following words or phrases: "national park", "NPS", "national parks", "national forest", national forests', and/or wilderness". This request seeks documents produced between August 1, 2017 and the date this request is processed."

As discussed more fully below, we are granting your request in part by providing you with 170 pages of documents. We have redacted certain information telephone numbers and conference-call access information in these documents that we find to be within the scope of FOIA Exemption 4, which protects matters that are "trade secrets and commercial or financial information obtained from a person and privileged or confidential."² Exemption 4 applies "if disclosure of the information is likely to...cause substantial harm to the competitive position of the person from whom

¹ FOIA request from Jimmy Tobias to FOIA Office, Federal Communications Commission (received August 17, 2018).

² 5 U.S.C. § 552(b)(4); 47 C.F.R. §§ 0.457(d), 0.459.

the information was obtained.”³ We find that the information we are redacting would cause competitive harm to the associated service providers if released and we withhold it on that basis.

The FOIA requires that “any reasonably segregable portion of a record” must be released after appropriate application of the Act’s exemptions.⁴ However, when nonexempt information is “inextricably intertwined” with the exempt information, reasonable segregation is not possible. We have reviewed the withheld or redacted records to determine if discretionary release is appropriate. We conclude that the withholdings made are consistent with our responsibility to determine if any segregable portions can be released.

We are required by both the FOIA and the Commission’s own rules to charge requesters certain fees associated with the costs of searching for, reviewing, and duplicating the sought after information.⁵ Pursuant to section 0.466(a)(5)-(7) of the Commission’s rules, you have been classified as category (2), which comprises “educational requesters, non-commercial scientific organizations, or representatives of the news media.”⁶ Requesters in this category are responsible only for any charges to recover the cost of reproducing the records requested, excluding the cost of reproducing the first 100 pages. Because this response did not involve any duplication, you will not be charged any fees in connection with your request.⁷

If you consider this to be a denial of your FOIA request, you may seek review by filing an application for review with the Office of General Counsel. An application for review must be *received* by the Commission within 90 calendar days of the date of this letter.⁸ You may file an application for review by mailing the application to Federal Communications Commission, Office of General Counsel, 445 12th St SW, Washington, DC 20554, or you may file your application for review electronically by e-mailing it to FOIA-Appeal@fcc.gov. Please caption the envelope (or subject line, if via e-mail) and the application itself as “Review of Freedom of Information Action” and reference Tracking No. FCC-2018-000840.

If you would like to discuss this response before filing an application for review to attempt to resolve your dispute without going through the appeals process, you may contact the Commission’s FOIA Public Liaison for assistance at:

³ *Id.* at 767; *see also Mercury PCS II, LLC*, FOIA Control No. 98-85, 15 FCC 14559, 14562 (2000) (citing *National Parks & Cons. Ass’n v. Kleppe*, 547 F.2d 673, 684 (D.C. Cir. 1976) (stating that, generally, business strategies or marketing plans that would enable competitors to devise counter-strategies are competitively sensitive materials within the meaning of Exemption 4); *Timken Co. v. United States Customs Serv.*, 491 F. Supp. 557, 559-60 (D.D.C. 1980); *International Satellite, Inc.*, 57 RR 2d 460, 462-63 (1984); and *Western Union Telegraph Co.*, FOIA Control No. 86-172, 2 FCC Rcd 4485, 4487 (1987).

⁴ *See* 5 U.S.C. § 552(b) (sentence immediately following exemptions).

⁵ *See* 5 U.S.C. § 552(a)(4)(A), 47 C.F.R. § 0.470.

⁶ 47 C.F.R. § 0.466(a)(5)-(7).

⁷ 47 C.F.R. § 0.470(a)(2).

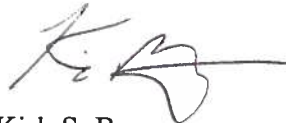
⁸ 47 C.F.R. § 0.461(j). 1.115; 47 C.F.R. § 1.7 (documents are considered filed with the Commission upon their receipt at the location designated by the Commission).

FOIA Public Liaison
Federal Communications Commission, Office of the Managing Director
Performance Evaluation and Records Management
445 12th St SW, Washington, DC 20554
FOIA-Public-Liaison@fcc.gov

If you are unable to resolve your FOIA dispute through the Commission's FOIA Public Liaison, the Office of Government Information Services (OGIS), the Federal FOIA Ombudsman's office, offers mediation services to help resolve disputes between FOIA requesters and Federal agencies. The contact information for OGIS is:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road-OGIS
College Park, MD 20740-6001
202-741-5770
877-684-6448
ogis@nara.gov
ogis.archives.gov

Sincerely,

A handwritten signature in black ink, appearing to read 'Kirk S. Burgee', with a long horizontal stroke extending to the right.

Kirk S. Burgee
Chief of Staff
Wireline Competition Bureau
Federal Communications Commission

cc: FOIA Office, FCC